



# INDIANA STATE BOARD OF EDUCATION

**MARCH 12, 2015**

## **Resolution Regarding Review of Performance Category Placement**

WHEREAS, per Indiana Code Section 20-31-8-4, the State Board (“Board”) shall place each school in a category or designation of school performance based on findings made by the Indiana Department of Education (“Department”),

WHEREAS, a school may, under Indiana Code Section 20-31-8-6, challenge its placement in a performance category,

WHEREAS, under 511 IAC 6.2-10-11, the Board shall establish the criteria for a school to challenge its category placement, and

WHEREAS, Indiana Code Section 4-21.5-3-34 allows the Board to adopt informal procedures to govern agency actions,

NOW, THEREFORE, BE IT RESOLVED THAT:

1. A school that has timely requested from the Department an audit, under Department guidelines, of the Department’s findings with respect to the school’s placement into a performance category, shall have the right to petition the Board for review of the Board’s category placement. In order to obtain Board review under this section, a school must:
  - (a) file a petition with the Board; and
  - (b) serve a copy of the petition on the Department.
2. A school may file a petition for review based on objective factors the school considers relevant, including significant demographic changes in the school population, errors in data, or other significant issues.
3. To initiate a proceeding for Board review under this resolution, a school must take the action required by section 1 not later than thirty (30) days after the Board determines the school’s initial category placement.
4. A school that fails to timely request an audit from the Department of the Department’s findings waives its right to petition for review under this resolution.

5. A petition for Board review must contain the following information:
  - (a) The name and address of the school filing the petition, the school's FAX number, telephone number, and electronic mail address, if any;
  - (b) The letter grade being for which review is sought;
  - (c) The date of the letter grade for which review is sought; and
  - (d) Why the school has been prejudiced by its initial category placement.
  
6. A petition filed under section 3 of this resolution may be delivered to the Board in the following manner:
  - (a) By personally offering or tendering the petition to a Board employee designated by the Board to receive petitions.
  - (b) By depositing the appeal in the United States mail addressed to the Board, with postage prepaid.
  - (c) By FAX or e-mail.
    - (i) Appeal by e-mail shall be deemed complete upon transmission, except as provided in subdivision (ii) of this subsection.
    - (ii) Appeal by FAX or e-mail that occurs on a Saturday, Sunday, a legal holiday, or a day the Board's office is closed, or after 4:30 p.m. Indianapolis time, shall be deemed complete the next day that is not a Saturday, Sunday, legal holiday, or day that the Board office is not closed.
  - (d) By depositing the appeal with any third-party commercial carrier for delivery to the Board within three (3) calendar days, cost prepaid, properly addressed.
  
7. A petition filed under this resolution shall comply with all federal and state laws pertaining to the confidentiality of student educational records.
  
8. The Board shall assign a school's petition for review to a hearing officer.

9. The hearing officer shall prepare the notice of appointment and requests for dates for hearing, and mail the notice of appointment to the school by certified mail. Notice shall include the following:
  - (a) Notice of the hearing officer's appointment.
  - (b) A copy of petition for review, including any attachments.
  - (c) A calendar showing the hearing officer's availability for hearing dates.
  - (d) Calendar pages for one or two months for the school to return.
10. After receiving a calendar back from the school, the hearing officer shall schedule a hearing in Indianapolis, IN. If the school does not return its calendar after twenty-one (21) days, the hearing officer may schedule the hearing. The hearing notification shall include notice of hearing rights. The school shall be given at least ten (10) days notice of the hearing by mail or personal delivery.
11. The hearing shall be recorded. The hearing officer shall hold a brief prehearing conference prior to the start of the hearing to ensure the school understands the issues, hearing procedures, and right to judicial review.
12. The hearing officer may consult with Board staff on matters requiring technical expertise. The rules against *ex parte* communication shall not apply to consultations under this section. Board members, including the Superintendent of Public Instruction, shall not be required to offer testimony or appear in any proceeding under this resolution.
13. A school shall not be permitted to offer into evidence any data that were
  - a. Available to the school prior to filing a petition for review,
  - b. Known or should have been known to the school prior to filing a petition for review, and
  - c. Not first submitted to the Department in accordance with all applicable federal and state statutory deadlines.
14. The provisions of this resolution shall be liberally construed to allow a school's petition to proceed informally, and to be heard and decided on the merits. A decision based on procedural grounds shall be disfavored. To the extent necessary to enable an informal

proceedings on the merits, the hearing officer shall explain to the school, in nontechnical terms, its rights and duties under this resolution.

15. The hearing officer shall issue a proposed determination to the school. The proposed determination may grant or deny a school's petition in whole or in part. The hearing officer shall serve copies of the proposed determination upon the school and the Board.
16. A school shall have fifteen (15) days after notice of the hearing officer's proposed determination is served upon a school to object in writing to the proposed determination. A school filing an objection under this section shall serve a copy upon the Board. If the school does not timely object to the hearing officer's proposed determination, the Board shall vote to affirm the proposed determination.
17. If a school timely objects to a hearing officer's proposed determination issued under section 15 of this resolution, the Board shall have the discretion to affirm, modify, or remand the hearing officer's determination to the hearing officer.
18. If the Board approves the hearing officer's proposed determination, the determination shall be final. A school that is prejudiced by a final determination under this resolution shall have a right to seek judicial review under Indiana Code Chapter 4-21.5-5.

ADOPTED ON: MARCH 12, 2015